overruling an earlier New York decision [13] construing the same statute, illustrates the increasing inclination of the courts to-day to recognize this interest of society.[14] The employee's consent by an assumption of the risk to give up a right involving such an interest should not be effective whether such consent be worked out contractually or otherwise.

RECENT CASES.

ADMIRALTY — TORTS — DAMAGES RECOVERABLE FROM ONE OF TWO VESSELS AT FAULT. — A steamship collided with a barge which was being towed by a tug. The steamship and tug were both at fault. The owners of the barge sued the steamship and recovered full damages. *Held*, that the judgment should be affirmed. *The Devonshire*, 107 L. T. R. 179 (H. L.).

For a discussion of the decision of the lower court, see 25 HARV. L. REV. 183.

AGENCY — RATIFICATION OF UNAUTHORIZED CONTRACTS — CONTRACT OF INSURANCE RATIFIED AFTER OCCURRENCE OF LOSS. — A contract of insurance was made on behalf of the plaintiff without authorization, but the premium was not paid. *Held*, that the plaintiff may ratify the contract after he knows of loss. *Marqusee* v. *Hartford Fire Ins. Co.*, 198 Fed. 475 (C. C. A., Second Circ.).

This decision reverses a holding which followed *Kline Bros.* v. *Royal Ins. Co.*, 192 Fed. 378, previously decided in the lower court. For a criticism of that case, see 25 HARV. L. REV. 729.

BANKRUPTCY — PROVABLE CLAIMS — CLAIM AGAINST BANKRUPT INDORSER OF NOTE MATURING AFTER THE FILING OF THE PETITION: EFFECT OF PARTIAL PAYMENT AT MATURITY BY MAKER. — The indorser of certain promissory notes became insolvent, and a petition in bankruptcy was filed before the maturity of the notes. At maturity part payment was made on the notes by the maker. *Held*, that the holder may prove for the entire amount of the notes. *In re Simon*, 197 Fed. 105 (Dist. Ct., W. D. N. Y.).

Under the Bankruptcy Act of 1898 there is no express provision for the discharge of contingent liabilities. By the earlier decisions under this act it was held that claims founded on such liabilities could not be proved. *Goding* v. *Roscenthal*, 180 Mass. 43, 61 N. E. 222. *In the matter of McCauley*, 2 N. B. N. Rep. 1085. And it is well settled that when a claim is so uncertain because of a contingency as to make any calculation of its value practically impossible, such claim is not provable. *Dunbar* v. *Dunbar*, 190 U. S. 340, 23 Sup. Ct. 757. Although the liability of an indorser is not determinable before maturity, it has been held by a liberal construction of § 63 *a* (4) of the act, which provides for proof of a claim founded upon a contract express or implied, that claims against a bankrupt indorser may be proved when the notes mature after the filing of the petition but before the expiration of the time for proving claims. *Moch* v. *Market Street National Bank*, 107 Fed. 897; *In re Semmer Glass Co.*, 135

611; Lore *v.* American Manufacturing Co., 160 Mo. 608, 621, 61 S. W. 678, 682. See also 20 HARV. L. REV. 111.

[13] Knisley *v.* Pratt, 148 N. Y. 372, 42 N. E. 986.

[14] An exposition of the way in which judicial reasoning will be affected by the changes of general opinion will be found in Smart *v.* Smart, [1892] A. C. 425, 432. This attitude on the part of the courts shows a capacity in the common law to adjust itself to changing conditions.

Fed. 77. See 23 HARV. L. REV. 636. In such cases the value of the claim should be determined by the liability as fixed. See *In re Smith*, 146 Fed. 923, 926. The liability of the indorser becomes fixed only to pay the amount unpaid by the maker at maturity after due notice. It would seem, therefore, that the holder in the principal case should have been required to reduce his claim by the amount of the payments.

BANKS AND BANKING — EFFECT OF PAYMENT THROUGH CLEARING-HOUSE. — A check indorsed by the defendant was sent through the clearing-house and charged against the drawee bank. The bank paid up the balance at the clearing-house, but being notified of the drawer's insolvency, returned the check before the close of the banking day, without having debited the drawer's account. *Held*, that this constitutes a dishonor of the check. *Columbia-Knickerbocker Trust Co.* v. *Miller*, 48 N. Y. L. J. 670 (N. Y. Sup. Ct.).

In the New York clearing-house checks are canceled off and the net credits and liabilities adjusted with the clearing-house at about one o'clock. By its constitution, errors are rectified between the banks themselves, and money is immediately refunded for bad checks returned on the same banking day. Thus the payment through the clearing-house is only a conditional payment, which becomes absolute at the end of the banking day if the drawee bank has not returned the check, or by some unequivocal act, such as debiting the drawer's account, affirmatively ratified the payment. *Manufacturers' National Bank* v. *Thompson*, 129 Mass. 438; *Atlas National Bank* v. *National Exchange Bank*, 176 Mass. 300, 57 N. E. 605. See MORSE, BANKS AND BANKING, 4 ed., § 349. In the principal case the cause of refusal arose after the check was debited in the clearing-house. The clearing-house agreement, however, does not state that the cause of refusal must exist before that time, but simply gives an option to return until the close of the banking day. It would be inconvenient to find out in each case exactly when the cause of refusal arose. There is nothing to prevent the law from giving full effect to the intention of the parties.

CONFLICT OF LAWS — MARRIAGE — JURISDICTION FOR NULLIFICATION. — A marriage ceremony was performed in New Jersey between parties resident in New York, one of whom was under eighteen years of age. A statute made such a marriage voidable if performed in New York. In New Jersey the marriage, although forbidden, was probably valid. *Held*, that the New York court has jurisdiction to annul the marriage. *Cunningham* v. *Cunningham*, 206 N. Y. 341. See NOTES, p. 253.

CONSTITUTIONAL LAW — CONTEMPT OF COURT — POWER OF LEGISLATURE TO REGULATE PUNISHMENT FOR CONTEMPT. — A state statute provided that punishment for contempt should not exceed a fine of $50 or imprisonment for ten days. A court created by the constitution imposed a fine in excess of that allowed by the statute. *Held*, that the statute does not violate the state constitution. *Ex parte Creasy*, 148 S. W. 914 (Mo., Sup. Ct.).

Courts created under constitutions almost unanimously assert their inherent power to punish for contempt. *Easton* v. *State*, 39 Ala. 551. See *State* v. *Morrill*, 16 Ark. 384, 388. But see *Ex parte Hickey*, 12 Miss. 751, 776–780. The cases apparently conflict only as to whether the legislature can regulate that power. Some courts refuse to recognize such regulation on the ground that it is inconsistent with their inherent power to punish. *Railway Co.* v. *Gildersleeve*, 219 Mo. 170, 118 S. W. 86; *Burke* v. *Territory*, 2 Okl. 499, 37 Pac. 829. The principal case, however, follows the view that the power can be regulated. *In re Gorham*, 129 N. C. 481, 40 S. E. 311. See *Wyatt* v. *People*, 17 Colo. 252, 261, 28 Pac. 961, 964. A third view allows procedural regulation only. *Mahoney* v.